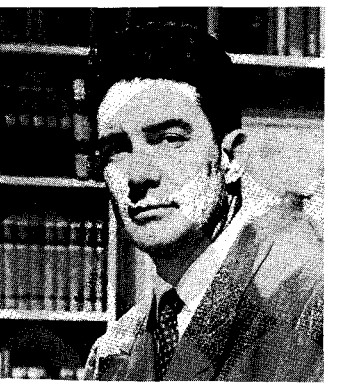
THE
Dan Smoot Report

Vol. 11, No. 13 (Broadcast 501) March 29, 1965 Dallas, Texas



DAN SMOOT

EARL WARREN COURT—PART II

Last week, I briefly reviewed some significant decisions which the Earl Warren Court has handed down since its fateful school-segregation decision on May 17, 1954. When placed against the backdrop of history, many of the decisions regarding communism form part of a design.

In 1945, American strength and prestige were matchless in the world, unrivaled in all of history. In contrast, the Soviet Union was weak and impoverished, despised throughout the world—even by millions of its own citizens. Yet, within five years (by 1950), communist imperialists had conquered and enslaved more than six hundred million people in China and about two hundred million others in a tier of European states from the Baltic to the Adriatic; and mighty America, already on the defensive, was crushing her own people with taxes to bribe other nations not to join the Soviets.

Just as the American people were becoming conscious of this frightful power shift, there came public exposures that the hand of treason was on levers of power in Washington, directing Soviet espionage operations inside important agencies of government, formulating policies harmful to America.

Public demand for action against communism in the United States became great; and, in 1950, action was taken: eleven top officials of the communist party were tried and convicted in Judge Harold Medina's Federal Court. The communist leaders were prosecuted under the Smith Act *which had been enacted in* 1940—but not used against the communist leaders for ten years, although during that time the FBI had cases ready and suitable for trial.

The 1950 trial of communists; the 1950 incarceration of Alger Hiss (who had been convicted of perjury for denying that he committed espionage for a communist spy ring); and the 1952 election of General Dwight D. Eisenhower (who had promised vigorous action against communism) mollified public opinion: something had been done about the communist conspiracy, and more was expected. Yet, within four years after Earl Warren became Chief Justice in October,

THE DAN SMOOT REPORT, a magazine published every week by The Dan Smoot Report, Inc., mailing address P. O. Box 9538, Lakewood Station, Dallas, Texas 75214; Telephone TAylor 1-2303 (office address 6441 Gaston Avenue). Subscription rates: $10.00 a year, $6.00 for 6 months, $18.00 for two years. For first class mail $12.50 a year; by airmail (including APO and FPO) $14.50 a year. Reprints of specific issues: 1 copy for 25¢; 6 for $1.00; 50 for $5.50; 100 for $10.00—each price for bulk mailing to one person. Add 2% sales tax on all orders originating in Texas for Texas delivery.

Copyright by Dan Smoot, 1965. Second class mail privilege authorized at Dallas, Texas.
No Reproductions Permitted.

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

1953, the Warren Court (in a series of cases, some of which were reviewed in this *Report* last week) had made it

—almost impossible for local, state, or federal authorities to remove communists from jobs in tax-supported institutions;

—next to impossible for law-enforcement agencies and legislative committees to investigate the communist conspiracy;

—absolutely impossible for state bar associations to deny membership to known communist lawyers;

—extremely difficult for the federal government to prosecute communist union officials who flaunt provisions of the Taft-Hartley law;

—practically useless to invoke the Internal Security Act of 1950; and

—illegal for state governments to prosecute communists, on grounds that the Smith Act preempted for the federal government exclusive authority in this field.

Having blunted or destroyed other legal weapons against communism, the Warren Court, in June, 1957, rendered the Smith Act ineffective—releasing from jail communists who had already been tried and convicted under the Act.

In effect, the shabby, unimportant officials of the communist party had served as decoys. Sending them to jail had allayed public concern. The Earl Warren Court made further effective investigation or prosecution of communists virtually impossible, and then let the decoys out of prison—emasculating the law that had sent them there.

In this connection, it is interesting to study material which U. S. Senator James O. Eastland (Mississippi Democrat, chairman of the Senate Judiciary Committee) presented to Congress on May 2, 1962. Senator Eastland said:

". . . nine men appointed for life, with no responsibility to the people in either their appointments or tenure . . . arrogate unto themselves the power to dictate to the sovereign states how they shall conduct their internal affairs, even to the point of . . . overturning the established constitutions and laws of the States . . . .

"The day is coming when such a usurpation of power on the part of nine such men must and will be repudiated."

To show what he meant by *nine such men*, Senator Eastland put in the *Congressional Record* a chart showing the stand taken by each Supreme Court Justice in 104 decisions (involving 107 cases) concerning subversive activities, from 1943 through 1961. He also mentioned cases prior to 1943.

From 1919 to 1942, the Court reached decisions in 11 subversive cases. The first seven decisions were against communism; the last four favored communism (36% in support of the communist position). From 1943 through 1953, the Court reached decisions in 34 cases, 15 for the communist position, 19 against (44% in favor of the communist position).

From 1954 (after Warren became Chief Justice) to the end of 1961, the Court made 70 decisions involving subversive activities — 46 in favor of communist positions, 24 against, for an average of 66% in favor of communist positions. Warren, participating in 65 decisions involving subversive activities, supported the communist position 62 times, held to the contrary three times, for an individual score of 95% in favor of communist positions.

Senator Eastland and many others (including Associate Justices who often strongly dissent) have pointed out that Warren decides on the basis of personal predilection, not on the basis of constitutional meaning. Some assume, therefore, that Warren supported the communist position 95% of the time because he personally favored that position.

Warren Court decisions directly aiding and abetting the communist enemy of the United States have not, however, done as much harm to our nation as decisions which have undermined the foundation of constitutional government.

As shown by cases reviewed in this *Report* last week, the Warren Court has usurped legislative powers of Congress, destroyed constitutionally reserved rights of states, and invaded the domain

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

of constitutionally protected private rights—even to the extent of invalidating a private will which had been probated and had stood the test of law for a hundred years.

For more details on how the Warren Court has aided the communist conspiracy and weakened the constitutional foundation of our society, I recommend five specific documents (which may be available in your local library, or from the publishers indicated, but *cannot be obtained through The Dan Smoot Report*):

(1) *Law of the Land,* by Warren Jefferson Davis, A Reflection Book, Carlton Press, New York City, 1962, price $3.50;

(2) *Nine Men Against America,* by Rosalie M. Gordon, The Devin-Adair Company, New York City, 1958, price $3.00; also available in paperback for $1.00 from American Opinion, Belmont, Massachusetts 02178;

(3) *Special Report of the County Counsel on Problem Created by Recent United States Supreme Court Cases Affecting the Communist Party and the Twenty Year Fight of the County of Los Angeles Against Subversion and Communism,* by Los Angeles County Counsel Harold W. Kennedy, printed in the *Congressional Record*, September 23, 1964, pp. 21939-48 (daily);

(4) The August 1, 1958, annual report of the American Bar Association's Special Committee on Communist Tactics, Strategy and Objectives, briefing 20 Warren-Court decisions which "directly affect the rights of the United States and the 48 states to protect themselves from communism";

(5) The chart prepared by Senator James O. Eastland, showing positions taken by Supreme Court Justices in 104 cases involving subversive activities, published in the *Congressional Record*, May 2, 1962, pp. 7026-34 (daily).

Sounding The Alarm

Concerning the May 17, 1954, decision of the Earl Warren Court, Senator James O. Eastland, on May 26, 1955, said:

"The Court has not only arrogated to itself powers which were not delegated to it under the Constitution of the United States and has entered the fields of the legislative and executive branches of the Government, but they are attempting to graft into the organic law of the land the teachings . . . and social doctrines arising from a political philosophy which is the antithesis of the principles upon which this Government was founded.

"The origin of the doctrines can be traced to Karl Marx, and their propagation is part and parcel of the conspiracy to . . . destroy this Government through internal controversy . . . .

"In the rendition of the opinion on the school segregation cases the entire basis of American jurisprudence was swept away. There is only one other comparable system of jurisprudence which is based upon . . . vacillating, political, and pseudo scientific opinion—the Peoples Courts of Soviet Russia.

"In that vast vacuum of liberty [the Soviet Union], the basis of their jurisprudence is the vacillating, ever-changing winds of pseudo-authority.

"And that today is the basis of American jurisprudence as announced by a unanimous opinion of our Supreme Court . . . ."

All Americans who understood and respected American constitutional principles shared Senator Eastland's concern about the Warren Court's decision of May 17, 1954; but the decision was so deeply entangled in the emotional, and politically explosive, racial problem, that there was no nationwide outcry of protest.

Before long, however, the Warren Court's lawless decisions had evoked public criticism by responsible men in all parts of the nation.

By a vote of 36 to 8, the 1956 Conference of Chief Justices of State Courts declared:

"Recent decisions [of the U. S. Supreme Court] have departed so far from constitutional precepts that the country no longer has a written Constitution any more than England."[1]

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

On May 13, 1957, in a speech on the floor of the House, U. S. Representative Noah M. Mason (Illinois Republican) said:

"The Founding Fathers and the makers of the Constitution agreed that an uncontrolled Supreme Court meant despotism, and must be guarded against. We now have such a Court . . . .

"This menace should haunt the thoughts of every citizen who believes in Constitutional Government. Congress must establish some form of control over the Supreme Court so that our guaranteed personal rights and privileges cannot be usurped by an uncontrolled, capricious Supreme Court. That is the task Congress must face up to and must accomplish before it is too late . . . .

"Our first and primary responsibility as Members of Congress . . . is to protect and preserve our Federal Constitution; to insist upon States' Rights; to do all we can to curb and control our uncontrolled Supreme Court . . . .

"Our oath of office pledges us to do just that . . . ."

Alarmed members of Congress have called June 17, 1957, "Red Monday," because on that day the Warren Court handed down the *Watkins Case* decision which handicaps congressional investigations of communism; the *Sweezy Case* decision which cripples state agencies investigating communist activities in tax-supported institutions; the *Yates Case* decision, which ruined the Smith Act and released 14 communists from prison.

On June 26, 1957, U. S. Representative Gordon H. Scherer (Ohio Republican) called June 17, 1957, "a Roman holiday for the Kremlin but an ominous day for the United States," explaining:

"I have reviewed a series of decisions by the Supreme Court over the last two years. As I come to realize the full impact of these decisions on the security of this nation, I become more alarmed about the direction in which we are heading. Legal principles, investigatory and judicial procedures which I learned in law school and which have been followed during 25 years of practice at the bar have been shattered.

"When the most significant of these decisions was handed down by the Court on June 17, a former chairman of the Communist Party in California rejoicingly exclaimed that it was 'the greatest victory the Communist Party in America has ever received.' . . .

"In one fell swoop these decisions of the Supreme Court have all but destroyed the most powerful weapons that the Federal Bureau of Investigation and Congressional investigating committees have in their fight against the internal subversion of this country.

"The Court has usurped the powers of the Congress. It has rewritten and nullified laws to fit its own social, political, and economic philosophies. It has destroyed basic and fundamental states' rights. It has invaded and taken over prerogatives of the executive branch. It has supplanted the jury and trial judge when expediency demands. It has handcuffed the police and F.B.I. in criminal cases . . . ."

On July 16, 1957, U. S. Senator Harry Flood Byrd (Virginia Democrat) said:

". . . a continuation of such decisions as those . . . rendered by the present Supreme Court will destroy the very fundamental principles which have made America the greatest Nation in all the world."

Here are abbreviated excerpts from a speech made by U. S. Senator William E. Jenner (Indiana Republican) on August 7, 1957:

The extreme Liberal wing of the Supreme Court has become a majority; and we witness today the spectacle of a Court constantly changing the law, and even changing the meaning of the Constitution, in an apparent determination to make the law of the land what the Court thinks *it should be.*

Reasonable men may err. If the Court had erred only once or twice in these decisions involving the greatest threat to human freedom which history ever had to look upon, reasonable men could find excuses for it. But what shall we say of this parade of decisions that came down from our highest bench on Red Monday after Red Monday?

We in Congress must fulfill our plain duty and act immediately in the way the Constitution empowers us to act, to repair as much of the damage as we can and prevent even worse damage in the future.

Senator Jenner quoted Assistant U. S. Attorney

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

General Warren Olney as saying the Supreme Court's Mallory Case decision of 1957,

". . . clearly demonstrates that a great many very serious crimes will go unpunished . . . not because the truth cannot be ascertained, but because of the procedures that have to be followed to develop the facts . . . .

"The Court is supposed to have its judgment rest on the best truth it can get but the Court will not listen to the truth."

On September 18, 1957, M. T. Phelps (now deceased, formerly chief justice of the Arizona Supreme Court) said of the Warren Court:

"It is the design and purpose of the court to usurp the policy-making powers of the nation.

"By its own unconstitutional pronouncements it would create an all-powerful, centralized government in Washington and subsequent destruction of every vestige of states' rights, expressly and clearly reserved to the states under the 10th Amendment of the Constitution . . . .

"Regardless of what we as individuals may think about the justice or injustice of segregation, I here assert without hesitation or reservation that the [May 17, 1954] decision was not based upon logic or law.

"I further charge that the processes followed in reaching the decision's conclusion violate all procedures of due process known to American jurisprudence . . . .

"I honestly view the supreme court with its present membership and predilections a greater danger to our democratic form of government and the American way of life than all forces aligned against us outside our boundaries.

"And I repeat again, that if the court is much longer permitted to destroy states' rights by a process of attrition, as it has been doing, we will see Washington clothed with powers so strong that the people will be helpless to curb its tyranny over them as they are in Russia today . . . ."[2]

At the 1958 Conference of Chief Justices of State Courts, 38 chief justices endorsed this statement:

"We do not believe that either the framers of the original Constitution or . . . the draftsmen of the 14th Amendment ever contemplated that the Supreme Court should, or would, have the unlimited policy-making powers it is now exercising."[1]

The furor about the long train of Warren Court Red Monday decisions (culminating in *the* Red Monday decisions of June 17, 1957) died down amazingly soon; and public criticism of the Court waned until the New York Prayer Case decision of June 25, 1962. That decision shocked more Americans than any other action of the Warren Court. Below is a brief sampling of remarks made in the national Congress on June 26, 1962, the day after the Prayer Case decision.

Representative Richard L. Roudebush (Indiana Republican):

". . . the Supreme Court would place this nation on an equal plane with Soviet Russia where the godless and atheistic communist rulers permit no mention of a Supreme Being . . . .

"It is incomprehensible to me that a nation which has acknowledged and pledged its very existence to God could produce a judicial body that would decide it is unconstitutional for our children to . . . declare their belief in God . . . . the hour is indeed late for America, when we would deny our God, from whom all our blessings flow.

"This is not a question of separation of church and state; it is a question of oppression of religion in America."

Representative Henry C. Schadeberg (Wisconsin Republican):

"If the name of God is not to be uttered in the public school classroom, then . . . we can look forward to the time when it will become unconstitutional to read or to teach the Declaration of Independence in our schools, because this historic document includes . . . references to God as the very Author of our rights . . . .

"This is the beginning of . . . a bold attempt to destroy the spiritual foundation of our Nation, and thus our freedom . . . ."

Representative Joe D. Waggoner, Jr. (Louisiana Democrat):

"Not any time before in the short history of

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

this nation has a more disgraceful or evil act been perpetrated . . . than yesterday's decision by the Supreme Court to ban Almighty God from the schools of the land . . . .

"I am appalled, horrified, ashamed, . . . and . . . fearful."

Representative Don L. Short (North Dakota Republican):

"We have reached a strange point in our history when this nation of people, *endowed by their Creator* (as stated in the Declaration of Independence) should take such a long step toward prohibiting the reiteration of a belief in God . . . ."

Representative Ben F. Jensen (Iowa Republican):

"I had always thought we could safely assume that acknowledgment of a supreme deity was . . . a universal common ground in this blessed land.

"I am horrified that six supreme jurists now think such recognition has no place in the schools, where formative guidance is so important.

"This is deliberate annihilation of a historical and sacred custom. I pray for America and its honorable Court."

Representative Frank J. Becker (New York Republican):

"This is not the first tragic decision of this Court, but I would say it is the most tragic in the history of the United States . . . ."

Representative Richard H. Poff (Virginia Republican) called the Prayer decision,

". . . a complete departure from established practice and precedent in American jurisprudence . . . . "

Representative John Bell Williams (Mississippi Democrat):

"Surely no action ever taken by an agency of Government in America has been so destructive of the basic foundations of our society. The implications of this decision and the interpretations which it suggests, are more terrifying, even than the threats of another war . . . .

"I . . . detect in this and other recent actions a deliberate and carefully planned conspiracy to substitute materialism for spiritual values, and thus to communize America . . . ."

Representative Robert L. F. Sikes (Florida Democrat):

"I find it difficult to choose the adjectives which properly describe this latest bid for infamy by the Nation's highest court. But, I must say that if the Supreme Court were openly in league with the cause of communism, they could scarcely advance it more than they are doing now."

Representative Thomas G. Abernethy (Mississippi Democrat):

"The decision of the Supreme Court . . . should once again demonstrate . . . that an unbridled Court [will] . . . destroy this country . . . .

"Legislation is pending before the Congress to calm the power grab of these power-drunken men. We should lay aside all else until this job is attended to."

Representative William G. Bray (Indiana Republican):

"Many of my constituents have asked me if the protection of the laws only applies to communists and fellow travelers, to atheists and perverts, and to those who would destroy our society. They wonder why this protection is not more often extended to protect things which are good and decent in our society, encouraging patriotism, spiritual devotion, personal morality, and responsibility."

Senator Sam J. Ervin, Jr. (North Carolina Democrat):

"The writer of this particular opinion—Justice Black . . . . says the right of freedom of speech is absolute and is not subject to any limitation whatever . . . . But . . . . a person cannot talk to God or about God while he is on public-school property."

Senator A. Willis Robertson (Virginia Democrat):

"The Court would not prohibit the circulation of obscene literature among the youth of the country, but yet it would not allow them to join in the offering of a prayer when they go to school . . . . I was shocked; and I hope all Members of the Senate were shocked and that they will not hesitate . . . to join . . . in a resolution to say to the Court, *We will not stand for this*

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

any longer. You have gone as far in misinterpreting the Constitution and our form of government as we will stand for . . . ."

Senator Herman E. Talmadge (Georgia Democrat):

"For some years now, the members of the Supreme Court have persisted in reading alien meanings into the Constitution of the United States. Through interpretations which cannot be sustained by either the language of the Constitution or the intent of the Framers, they have sought, in effect, to change our form of government.

"But never in the wildest of their excesses . . . have they gone as far as they did on yesterday when—in a gross distortion of the first amendment—six of the justices decreed that the voluntary saying of nondenominational prayers in public schools is unconstitutional.

"It was an outrageous edict which has numbed the conscience and shocked the highest sensibilities of the Nation. If it is not corrected, it will do incalculable damage to the fundamental faith in Almighty God which is the foundation upon which our civilization, our freedom, and our form of government rest . . . .

"The first amendment is so clear that any fourth-grade student can understand it. It says simply that: *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.*

"Congress has made no such law . . . . And in the absence of such a law, the Supreme Court is without authority to act on the subject.

"In fact . . . a true interpretation of the spirit of the Constitution would hold that the Supreme Court, not the State of New York, has violated it . . . . because the effect of yesterday's ruling was to prohibit the free exercise of religion by the school children of the State of New York . . . .

WHO IS DAN SMOOT?

Born in Missouri, reared in Texas, Dan Smoot went to SMU getting BA and MA degrees, 1938 and 1940. In 1941, he joined the faculty at Harvard as a Teaching Fellow, doing graduate work for a doctorate in American civilization. From 1942 to 1951, he was an FBI agent: three and a half years on communist investigations; two years on FBI headquarters staff; almost four years on general FBI cases in various places. He resigned from the FBI and, from 1951 to 1955, was commentator on national radio and television programs, giving *both* sides of controversial issues. In July, 1955, he started his present profit-supported, free-enterprise business: publishing *The Dan Smoot Report,* a weekly magazine available by subscription; and producing a weekly news-analysis radio and television broadcast, available for sponsorship by reputable business firms, as an advertising vehicle. The *Report* and broadcast give *one* side of important issues: the side that presents documented truth using the American Constitution as a yardstick. If you think Smoot's materials are effective against socialism and communism, you can help immensely—help get subcribers for the *Report,* commercial sponsors for the broadcast.

ORDER FORM

(for pocketsize paperback edition of *The Invisible Government)*

_____1 copy	$ 1.00
_____6 copies	$ 4.00
_____10 copies	$ 6.00
_____25 copies	$ 12.00
_____50 copies	$ 22.00
_____100 copies	$ 40.00
_____500 copies	$175.00
_____1000 copies	$250.00

Name of person to whom books should be shipped

Street Address

City State Zip Code

(Texans Add 2% for Sales Tax)

Payment in the amount of _____ enclosed.

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

"[I] hope . . . this unconscionable edict will [arouse] . . . the American people to demand action by their elected representatives to put an end . . . to . . . judicial encroachments which are destroying freedom and constitutional government in this country . . . ."

Something Must Be Done

The Warren Court's apportionment decisions have again raised criticism of the Court to a high pitch, swelling the demand for corrective action.

Since the Court's Red Monday decisions of 1957, members of Congress have formally proposed many bills to curb the Supreme Court, and to offset evil effects of some of its decisions. None has yet been enacted by both Houses of Congress; but in 1965, efforts to do something about the Court are greater in volume and more determined in purpose than ever before.

Next week, I shall discuss past and pending proposals to check the Warren Court's dangerous abuse of power, and shall suggest some remedies.

* * * * *

Congressional Fund

The financial burden of sending the *Report* to all members of the national Congress is great. Hence, I want to express special appreciation to those who are helping again this year to bear the burden, by contributing to our Congressional Fund.

Film For Sale

Each *Dan Smoot Report* is briefed for radio and television broadcast. Our 16 mm. broadcast film for 1963 and 1964 are now for sale at $5.00 each. Send for free list, or order from broadcast number on 1963 and 1964 *Reports.* Film on *Reports* published during 1965 are available for $25.00 each. Allow three weeks for delivery.

Zip Codes

We appreciate the response of subscribers in sending us their zip codes but there are still thousands who have not sent them. To insure delivery of your *Report*, please send us your zip code number immediately, if you have not yet done so.

FOOTNOTES

(1) "Six Indictments of the U. S. Supreme Court," by former U. S. Representative Burr P. Harrison (Dem., Va.), *Human Events*, January 11, 1964, pp. 8-9

(2) Text of speech by Justice M. T. Phelps of the Arizona Supreme Court to the Hiram Club, Phoenix, Arizona, September 18, 1957

Subscription:	**6 months**	**– $ 6.00**
	1 year	**– $10.00**
1962 Bound Volume		**– $10.00**
1963 Bound Volume		**– $10.00**
1964 Bound Volume		**– $10.00**
The Invisible Government		
Clothback		**– $ 4.00**
Paperbound		**– $ 2.00**
Pocketsize		**– $ 1.00**
The Hope Of The World		**– $ 2.00**
America's Promise		**– $ .50**
The Fearless American		
(L-P Record Album)		**– $ 3.98**
Deacon Larkin's Horse		
(L-P Record Album)		**– $ 3.98**

NAME *(Please Print)*

STREET ADDRESS

CITY STATE ZIP CODE

(Texans Add 2% for Sales Tax)

PRODUCED BY UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED